

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JUAN PEREZ

Plaintiff,

- against -

CITY OF NEW YORK; NEW YORK CITY
POLICE DEPARTMENT (NYPD);
individually and in their official capacity as
NEW YORK CITY POLICE OFFICERS-
POLICE OFFICER LUIS FERNANDEZ,
SH#17933, and POLICE OFFICER SEGIO
MARTE, SH# 25830, Precinct 30 and John
Doe Police Officer.

ANSWER OF DEFENDANT
CITY OF NEW YORK

07 CV 7098 (HB)

JURY TRIAL DEMANDED

Defendants.

-----X

Defendants Luis Fernandez and Segio Marte, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to proceed as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except admit that plaintiff purports to bring this action as stated therein.
3. Deny the allegations set forth in paragraph "3" of the complaint, except admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.
4. Deny the allegations set forth in paragraph "4" of the complaint, except admit that plaintiff purports to base venue as stated therein.
5. Defendants state that the statement set forth in paragraph "5" of the complaint is not an averment of fact to which a response is required.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the complaint, except admit that the City of New York is a municipal corporation arranged under the laws of the State of New York and that it employs police officers.

8. Deny the allegations set forth in paragraph "8" of the complaint, except admit that the City of New York maintains a police department.

9. Paragraph "9" of the complaint contains conclusions of law, rather than averments of fact, and accordingly requires no response.

10. Paragraph "10" of the complaint contains conclusions of law, rather than averments of fact, and accordingly requires no response.

11. Deny the allegations set forth in paragraph "11" of the complaint, except admit plaintiff was arrested on April 19, 2007.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the complaint, except deny that police had arrested the wrong person.

14. Deny the allegations set forth in paragraph "14" of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint, including all subparts thereto.

16. In response to paragraph "16" of the complaint, defendants repeat its response to the allegations set forth in paragraphs "1" through "15" as though fully set forth herein.

17. Deny the allegations set forth in paragraph "17" of the complaint.

18. Deny the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Deny the allegations set forth in paragraph "20" of the complaint,

21. Deny the allegations set forth in paragraph "21" of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

36. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

37. Defendants have not violated any rights, privileges, or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

38. The alleged injuries were due to plaintiff's own negligence and/or culpable conduct and for the intervening culpable or negligent conduct of others for whom the City of New York is not responsible, and were not proximately caused by defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

39. This action may be barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

40. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

41. There was probable cause for plaintiff's arrest, detention and prosecution.

AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE

42. The New York City Police Department is not a suable entity.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

43. This action is barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

44. Plaintiff provoked any incident

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

45. This action may be barred in whole or in part for plaintiff's failure to comply with conditions precedent to suit.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

46. Plaintiff cannot obtain punitive damages against the City of New York.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

47. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

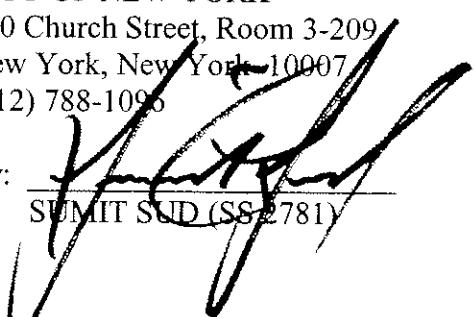
WHEREFORE, defendants Luis Fernandez and Segio Marte demands judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

DATED: New York, New York
December 10, 2007

Respectfully submitted,

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
CITY OF NEW YORK
100 Church Street, Room 3-209
New York, New York 10007
(212) 788-1096

By:


SUMIT SUD (SS-2781)

TO: Rudy Velez, Esq.
930 Grand Concourse Suit 1A
Bronx, New York 10451 (via ECF)

Index No. 07 CV 7098(HB)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN PEREZ

Plaintiff,

- against -

CITY OF NEW YORK; NEW YORK CITY
POLICE DEPARTMENT (NYPD); individually and
in their official capacity as NEW YORK CITY
POLICE OFFICERS-POLICE OFFICER LUIS
FERNANDEZ, SH#17933, and POLICE OFFICER
SEGIO MARTE, SH# 25830, Precinct 30 and John
Doe Police Officer.

Defendants.

ANSWER TO COMPLAINT

MICHAEL A. CARDODOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street, Room 3-209
New York, N.Y. 10007

Of Counsel: Sumit Sud
Tel: (212) 788-1096
NYCLIS No.

Due and timely service is hereby admitted.

New York, N.Y., 2007....

.....Esq.

Attorney for